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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. HAROLD ISAAC BROWN, Defendant and Appellant.	A124897 (Marin County Super. Ct. No. SC152536A)

Harold Isaac Brown (appellant), who was convicted of oral copulation of a minor (Pen. Code, § 288a, subd. (b)(1)[1]), challenges the trial court's victim restitution order requiring him to pay 70 percent of the victim's treatment costs. He contends: (1) the trial court erred in ordering him to pay for the victim's treatment because there was no competent evidence that the treatment was necessitated by appellant's conduct; (2) the trial court erred in denying his motion for a continuance of the restitution hearing; and (3) no substantial evidence supports the order. We reject the contentions and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 18, 2007, appellant pleaded guilty to one count of oral copulation of John Doe,[2] a minor (§ 288a, subd. (b)(1)), and the remaining five counts were dismissed

[1] All statutory references are to the Penal Code unless otherwise stated.

[2] We use the pseudonym John Doe, as did the trial court, to protect the victim's identity.

without a *Harvey* waiver.[3] The trial court sentenced appellant to two years in state prison and ordered him to register as a sex offender (§ 290) and pay victim restitution (§ 1202.4). Appellant appealed and argued the trial court erred in ordering sex offender registration. We issued an opinion on July 29, 2008, reversing the order requiring mandatory sex offender registration and remanding the matter for a hearing to allow the trial court to exercise its discretion whether sex offender registration was appropriate.[4]

On remand, the trial court held hearings concerning sex offender registration and restitution. At a February 25, 2009, hearing, after the trial court found appellant would not be required to register as a sex offender, the parties addressed the restitution issue and Doe's mother took the stand. She testified that after conducting "extensive research" and contacting "dozens of places" in six states including California, she sent Doe to the Lifeline treatment center (Lifeline) in Utah. She testified she could not afford sending Doe to a facility in California and that Lifeline was "by far the least and offered the most for [Doe]." In selecting a treatment center, her "primary focus was the sexual abuse," and Lifeline "offered a program with counseling and a group for that," in addition to addressing substance abuse and other behavioral issues. She did not believe Lifeline was primarily a substance abuse treatment center because "the programs are for the individuals and what they offer. They then, through his clinician, . . . find out what the individual needs [are]." She testified Lifeline "offered a program with counseling and a group for [sexual abuse]" and "gave him life skills to deal with what happened." She testified Doe was treated at Lifeline from March 30, 2007, to September 10, 2007. The total cost of treatment was $28,820 and the amount had been paid in full. She also incurred transportation costs to bring Doe to Lifeline and for herself to attend mandatory

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[3] Absent a *Harvey* waiver by the defendant, a sentencing court is not permitted to rely upon information relating to counts dismissed in accordance with a plea bargain. (*People v. Harvey* (1979) 25 Cal.3d 754, 758-759.)

[4] We have taken judicial notice of the record in the prior appeal, *People v. Brown* (July 29, 2008, A119857).

monthly meetings for parents. She submitted documents in support of a total restitution claim of $31,202.

Defense counsel argued that although he did not dispute the propriety of restitution "for counseling of a sexual [abuse] nature," he objected to the amount claimed because the documents submitted by Doe's mother did not "segregate out" how much of the treatment was directed to sexual abuse as opposed to Doe's alleged substance abuse. He further stated, "And you remember Dr. Burstein[5] . . . said Lifeline is clearly a narcotics treating place." The prosecutor responded that because "the facts of this offense involve the defendant furnishing methamphetamine to the victim," "it was necessary to find a so-called dual diagnosis-type of facility" that "would address the sexual assault issues, as well as the drug issues." The prosecutor further stated there was "no evidence that the victim . . . had a drug addiction before he met up with the defendant." Defense counsel noted that appellant had pleaded guilty to only one count involving sexual abuse (and not to any counts related to furnishing methamphetamine to Doe) and that appellant had not entered a *Harvey* waiver. At the end of the hearing, the trial court granted appellant's request for a "more formal, separate and independent" restitution hearing and scheduled the hearing for April 2, 2009. Defense counsel stated he intended to file a petition in the juvenile court "to get records regarding whether or not [Doe's] drug addiction was a pre-existing condition . . . ." The trial court stated, "I can preliminarily state that I don't see the relevance of [Doe's] juvenile records . . . ."

On March 30, 2009, appellant filed a motion for a continuance of the restitution hearing on the ground the juvenile court had not yet taken any action on his request for Doe's juvenile records. At the April 2, 2009, hearing, defense counsel made an offer of

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5 During his testimony on the issue of whether appellant should be required to register as a sex offender, Dr. Jules Burstein, a clinical and forensic psychologist, stated, "[Doe's mother and her fiancé] felt the harm [suffered by Doe] was substantial enough that they sent him to a residential treatment center in Utah called Lifeline, which I checked out online. And it's apparently a residential treatment center that focuses on substance abuse and reuniting families and also has counseling if you've been sexually abused." He stated "it's pretty clear" that Lifeline is "not a place that focuses on sexual abuse but rather on substance abuse."

proof that Doe's juvenile records would show there were "preexisting conditions dealing with . . . his substance abuse, which I think was not generated solely after his contact with [appellant]. I believe he was a troubled youth from before then." The trial court denied the motion for a continuance. It observed, "I don't know of anyone who, you know, you can look at and say, 'Here's a perfect person and there's a program that's just going to treat oral copulation.' I mean, truly, this is an integrated picture of a person, not—it's kind of like in accidents, plaintiff is as the plaintiff is. You take the plaintiff as the eggshell plaintiff. I'm not arguing [appellant] is responsible for curing all of the victim's problems or issues, either. I'm not stating that. [¶] But I think it's very hard to pull out a singularity here in the context of this teenager."

At the hearing, the parties reviewed an email exchange between the prosecutor and the executive director of Lifeline. The prosecutor's email to Lifeline stated, "I understand that Lifeline is a dual diagnosis treatment program that attributes its success to a treatment modality that addresses both the core issues (in this case the sexual assault issues) and the acting out behavior (the substance abuse issues) and that Lifeline offers treatment programs that are specialized to deal with sexual abuse issues and coexistent substance abuse issues. [¶] My question is whether there is some way to separate out both the core issue from the acting out behavior issue in order to apportion the cost of each. In other words the defense is willing to pay for the sexual assault portion of the cost but not the drug treatment portion." Lifeline's executive director's responded, "Can Life-Line separate out the cost of treating the core treatment issue from the acting out behavior to apportion the cost of each? The answer is No. [¶] Reason #1: The core treatment issues and the acting out behavior are linked too closely to each other. . . . [¶] Reason #2: The goals of treatment when a family is in crisis with an acting out teenager go far beyond isolating out a compulsive behavior or simply stating a core issue of abuse and treating that single issue. . . . [¶] Reason #3: The costs for the treatment methods or the personal application of the critical principles required for healing cannot be apportioned. . . . [¶] Reason #4: The differentiation goal that is attributed to the developmental period called adolescence is too complex to apportion costs to separate treatment issues."

The trial court announced a tentative ruling subject to modification based on any new evidence presented. The trial court stated its intent to find appellant liable for 70 percent of the $28,820 paid to Lifeline, plus $2,382 in "derivative losses." The 70 percent represented what the trial court found to be a reasonable estimate of the cost "of the core abuse here, that being the sexual abuse." The trial court stated, "[D]efendant has maintained that the restitution claim includes losses that did not result from the crime . . . he committed. [¶] . . . [T]he Court has not received evidence that this program that was selected by the parents was not appropriate or could have been a singular program with sexual abuse only for a teenager. [¶] . . . [S]ome questions were asked about it but no evidence was presented to the Court to find that this was not an appropriate treatment program for this juvenile who was subject to Mr. Brown's treatment in this case. [¶] And it's clear . . . [Lifeline] had dual diagnosis and they had programs for sexual abuse, as well as a number of other things. [¶] . . . [¶] With respect to the derivative losses and travel and what have you, and the requirement of the program that the parents be there, mandatory, once a month, those expenses as presented were $2,382. And . . . travel and those kinds of expenses would be required, whether it was a single diagnosis or a dual diagnosis program. They will be ordered . . . in their entirety."

After argument by the parties, during which defense counsel disputed some of the costs, the trial court noted there was a "memo . . . from [Doe's mother] of May 23rd [in which] she says the total cost for the time period [March 30, 2007, to September 10, 2007] was [$]26,400," and modified its decision, ordering appellant to pay 70 percent of $26,400, plus other costs, for a total of $18,362.50.

DISCUSSION

Treatment at Lifeline

Appellant contends the trial court abused its discretion and violated his right to due process by ordering him to pay for Doe's treatment at Lifeline because there was no competent evidence that the treatment was necessitated by appellant's conduct. We reject the contention.

Section 1202.4, subdivision (f), provides: "[I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim . . . or any other showing to the court. . . . The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record." The defendant has a right to a hearing to dispute the amount of restitution, and the court "may modify the amount, on its own motion or on the motion of the district attorney, the victim . . . or the defendant." (§ 1202.4, subd. (f)(1).) Restitution to the victim is mandatory, although the court retains discretion as to the amount. (*People v. Rowland* (1997) 51 Cal.App.4th 1745, 1751-1753.)

A trial court's determination of the amount of restitution is reversible only if the appellant demonstrates a clear abuse of discretion. (*People v. Thygesen* (1999) 69 Cal.App.4th 988, 992.) No abuse of discretion is shown simply because the order does not reflect the exact amount of the loss, nor must the order reflect the amount of damages recoverable in a civil action. (*People v. Bernal* (2002) 101 Cal.App.4th 155, 162.) In determining the amount of restitution, all that is required is that the trial court "use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious." (*People v. Thygesen, supra,* at p. 992; *In re Brian S.* (1982) 130 Cal.App.3d 523.) The order must be affirmed if there is a factual and rational basis for the amount. (*People v. Dalvito* (1997) 56 Cal.App.4th 557, 562.)

Appellant argues he should not have to pay any restitution because "[n]o therapist or other qualified expert testified that the treatment . . . was required as a result of [appellant's] conduct." He states, "The only witness presented by the prosecution was [Doe's mother]. . . . But [Doe's mother] is not a qualified expert who could establish whether the [need for] treatment was a direct result of anything [appellant] had done." However, appellant has not cited any relevant authority for his position that a "therapist or other qualified expert" must testify regarding causation before a criminal defendant is

required to pay victim restitution.[6] It is undisputed that appellant sexually abused Doe, and in these circumstances it should require no expert to show that a victim of sexual abuse has suffered emotional harm requiring treatment.

Moreover, there was ample evidence that Lifeline provided the kind of treatment Doe needed to recover from the sexual abuse he suffered. As noted, Doe's mother testified that her "primary focus was [to find a place that would treat] the sexual abuse" and that Lifeline offered appropriate counseling and programs that "gave [Doe] life skills to deal with what happened." Further, Lifeline's executive director stated it was not possible to treat only a "single issue" or to "separate out" the cost of treating sexual abuse issues and substance abuse issues because the issues are "linked too closely together." This showed that Lifeline provided treatment for sexual abuse and that addressing the sexual abuse and substance abuse issues together was necessary to properly treat Doe.[7] The trial court did not abuse its discretion in ordering appellant to pay costs related to Doe's treatment at Lifeline. Because we conclude the trial court's order was proper, we also reject appellant's argument that the trial court violated his due process rights by "arbitrar[ily] fail[ing] to honor established state court procedures" in issuing its order.

Motion for a continuance

Appellant contends the trial court abused its discretion and violated his due process rights in denying his motion for a continuance of the restitution hearing until the juvenile court could rule on his request for the release of juvenile records that would

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[6] Appellant cites two civil tort cases involving expert testimony. However, civil damage recovery rules do not limit or control restitution awards. (*People v. Bernal*, *supra*, 101 Cal.App.4th at pp. 162-163.) Victim restitution has broader aims than tort law, including rehabilitation and deterrence of the defendant. (*Id.* at pp. 161-162.)

[7] Appellant points out that Dr. Burstein "testified that Lifeline was primarily a substance abuse facility, not a sex abuse facility." However, Dr. Burstein merely stated he had "checked [Lifeline] out online" and that it appeared Lifeline's programs focused on substance abuse rather than sexual abuse. He did not provide any testimony as to whether Lifeline was an appropriate treatment center for Doe. In any event, he also acknowledged that Lifeline provides counseling for those who have been sexually abused.

purportedly show that Doe had preexisting substance abuse issues requiring treatment. We disagree.

A continuance will be granted only for good cause (§ 1050, subd. (e)), and the trial court has broad discretion to grant or deny the request. (*People v. Grant* (1988) 45 Cal.3d 829, 844.) "In determining whether a denial was so arbitrary as to deny due process, the appellate court looks to the circumstances of each case and to the reasons presented for the request." (*People v. Frye* (1998) 18 Cal.4th 894, 1013, overruled on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) One factor to consider is whether a continuance would be useful. (*People v. Beeler* (1995) 9 Cal.4th 953, 1003 ["[T]o demonstrate the usefulness of a continuance a party must show both the materiality of the evidence necessitating the continuance and that such evidence could be obtained within a reasonable time"].) The trial court "must consider not only the benefit which the moving party anticipates but also the likelihood that such benefit will result, the burden on other witnesses, jurors and the court and, above all, whether substantial justice will be accomplished" by granting a continuance. (*People v. Laursen* (1972) 8 Cal.3d 192, 204.) The burden is on the defendant to establish error. (*People v. Beeler*, *supra*, 9 Cal.4th at p. 1003.) " '[A]n order of denial is seldom successfully attacked.' [Citation.]" (*Ibid.*)

Appellant argues the trial court erred in denying his motion for a continuance because it is "reasonably probable" the trial court would have ordered him to pay less than 70 percent of the costs of treatment had he been allowed to make a "stronger showing" of Doe's preexisting issues. The record shows, however, that the trial court presumed Doe had preexisting issues and took that into account in issuing its order. As noted, the trial court stated, "I don't know of anyone who, you know, you can look at and say, 'Here's a perfect person and there's a program that's just going to treat oral copulation.' . . . You take the plaintiff as the eggshell plaintiff. [¶] . . . [I] think it's very hard to pull out a singularity here in the context of this teenager." The trial court then found that 70 percent of the treatment at Lifeline focused on the "core" issue of sexual

abuse.[8] Further, the email from Lifeline's executive director showed that treating all of Doe's issues together, including those from which he might have suffered before the sexual abuse, was necessary to achieve "the goals of treatment." Thus, a "stronger showing" of preexisting issues would not have undermined the type of therapy Doe needed and would not have resulted in a lower restitution award. There was no error.

Substantial evidence

Appellant contends there is no substantial evidence supporting the order. We disagree.

It is settled that a victim's estimate of his or her loss constitutes prima facie evidence supporting restitution, requiring rebuttal evidence by the defendant to overcome it. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.) "At a victim restitution hearing, a prima facie case for restitution is made by the People based in part on a victim's testimony on, or other claim or statement of, the amount of his or her economic loss. [Citations.] 'Once the victim has . . . made a prima facie showing of his or her loss, the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim. [Citations.]' [Citation.]" (*Ibid*.) " ' "A defendant's due process rights are protected if he is given notice of the amount of restitution sought and an opportunity to contest that amount . . . ." ' [Citations.]" (*In re S.S.* (1995) 37 Cal.App.4th 543, 547.)

Here, Doe's mother testified regarding the costs she incurred and submitted billing statements showing the total amount charged and paid. Further, in a letter to the prosecutor, Doe's mother explained, "The statements reflect one half of the cost that I incurred for the treatment. The other half was paid by his father who does not have contact with [Doe] any longer since this happened to [Doe]. [¶] Therefore, the total cost

[8] The trial court did not find, as appellant appears to believe, that appellant *caused* 70 percent of Doe's problems. Rather, as noted, it found that 70 percent of the *treatment* dealt with sexual abuse issues. Appellant did not present or attempt to present any evidence showing that less than 70 percent of the programs at Lifeline focused on treating sexual abuse issues.

was twice as much as the statements indicate. The daily cost was $360[9] and [Doe] was there from March 30, 2007 to September 10, 2007. The total cost for that time period was $26,400." The People established a prima facie case that the total cost of treatment at Lifeline was $26,400.

Appellant asserts that the total cost of restitution should have been 70 percent of $15,760—not 70 percent of $26,400—because although the statements for the months of March and April show a daily charge of $160, the statements for the months of May, June, July and August show a daily charge of only half the amount, or $80. While this is true, the discrepancy can be reasonably explained by the fact that Doe's father was paying for one half the treatment costs. For example, the statement dated July 16, 2007, shows that Doe's mother was billed $80 per day for the months of May and June and that another individual was billed $80 for those same months, for a total of $160 billed per day for those months. Appellant has not met his burden of showing that the cost of treatment was less than $26,400.

Appellant also asserts the trial court abused its discretion by requiring him to pay the full cost of transportation rather than apportioning it as it did for the cost of treatment. However, in ordering appellant to pay the full amount, the trial court provided reasonable explanation, stating, "And . . . travel and those kinds of expenses would be required, whether it was a single diagnosis or a dual diagnosis program."

Finally, appellant points out that the minute order shows the restitution award was $18,362.54, when in fact the order was for $18,362.50, a difference of four cents. He asks that we order the trial court to amend the minute order to reflect the correct amount. We decline to do so. While we acknowledge the clerical error, the discrepancy is minimal and appellant will not be prejudiced by it because both the reporter's transcript and the order reflect the correct amount.

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9 Appellant suggests this $360 figure was a typographical error because $160 (not $360) multiplied by the total number of days Doe was in treatment (165 days) equals $26,400.

DISPOSITION

The restitution order requiring appellant to pay $18,362.50 in victim restitution is affirmed.

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McGuiness, P.J.

We concur:

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Siggins, J.

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Jenkins, J.